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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/972,181	10/05/2001	Dusan Miljkovic	700.03-USI	3749

34284 7590 01/15/2004

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EXAMINER

OH, TAYLOR V

ART UNIT PAPER NUMBER

1625

DATE MAILED: 01/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/972,181

**Applicant(s)**

MILJKOVIC, DUSAN

**Examiner**

Taylor Victor Oh

**Art Unit**

1625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

The Status of Claims :

Claims 1-20 are pending.

Claims 1-20 have been rejected.

**DETAILED ACTION**

1. Claims 1-20 have been under consideration.

**Priority**

2. This application claims benefit of 60/239,056 filed on 10/05/2000.

**Drawings**

3. The drawing filed on 10/05/2001 is accepted by the examiner.

**Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-20 are rejected under 35 U.S.C. 102(e) as being anticipated clearly by Miljkovic et al (US 6,080,425).

Miljkovic et al discloses cream formulation of sodium ascorbato-borate shown in Example 5 (see col. 9, lines 13-28). Furthermore, the oxidizable sodium ascorbato-borate complex compound has inherently possessed a second stability toward the oxidation which is at least five , fifty, or five hundred times greater than the first stability. This is identical with the claims.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Claims 1-20 are rejected under 35 U.S.C. 102(a) as being anticipated clearly by Miljkovic et al (US 6,080,425).

Miljkovic et al discloses cream formulation of sodium ascorbato-borate shown in Example 5 (see col. 9, lines 13-28). Furthermore, the oxidizable sodium ascorbato-borate complex compound has inherently possessed a second stability toward the oxidation which is at least five , fifty, or five hundred times greater than the first stability. This is identical with the claims.

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Claims 1, 3-4, and 7-19 are rejected under 35 U.S.C. 102(a) as being anticipated clearly by Miljkovic et al (US 5,962,049).

Miljkovic et al discloses the formulation of calcium fructo-borate complex compound shown in experiments(see col. 5, lines 44-59). Furthermore, the oxidizable calcium fructo-borate complex compound has inherently possessed a second stability toward the oxidation which is at least five , fifty, or five hundred times greater than the first stability. This is identical with the claims.

Claims 1, 3-4, and 7-19 are rejected under 35 U.S.C. 102(e) as being anticipated clearly by Miljkovic et al (US 5,962,049).

Miljkovic et al discloses cream formulation of sodium ascorbato-borate shown in Example 5 (see col. 9, lines 13-28). Furthermore, the oxidizable sodium ascorbato-borate complex compound has inherently possessed a second stability toward the oxidation which is at least five , fifty, or five hundred times greater than the first stability. This is identical with the claims.

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Claims 1, 3-4, and 7-19 are rejected under 35 U.S.C. 102(a) as being anticipated clearly by Miljkovic et al (US 5,985,842).

Miljkovic et al discloses the liposome formulation of calcium fructo-borate complex compound shown in Example 3 (see col. 7, lines 25-36). Furthermore, the oxidizable calcium fructo-borate complex compound has inherently possessed a second stability toward the oxidation which is at least five, fifty, or five hundred times greater than the first stability. This is identical with the claims.

Claims 1, 3-4, and 7-19 are rejected under 35 U.S.C. 102(e) as being anticipated clearly by Miljkovic et al (US 5,985,842)..

Miljkovic et al discloses cream formulation of sodium ascorbato-borate shown in Example 5 (see col. 9, lines 13-28). Furthermore, the oxidizable sodium ascorbato-borate complex compound has inherently possessed a second stability toward the

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oxidation which is at least five , fifty, or five hundred times greater than the first stability. This is identical with the claims.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Taylor Victor Oh whose telephone number is 703-305-0809. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alan Rotman can be reached on 703-308-4698. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

*Victor Oh*  
11/14/04

*Ceila Chang*  
**CEILA CHANG**  
**PRIMARY EXAMINER**, Act: 8 592  
**GROUP 1200** 1625